

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

May 15, 2008

A meeting of the Board of Environmental Protection was held on Thursday, May 15, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest Hilton, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Ernest Hilton, Susan Lessard, P. Andrews Nixon, Matt Scott, and Lissa Widoff

Absent: Dick Gould, Don Guimond, and Nancy Ziegler

<u>Staff:</u>	Bureau of Land and Water Quality	Robin Clukey
	Bureau of Air Quality	James P. Brooks, Director
	Bureau of Air Quality	Ron Severance
	Bureau of Air Quality	Marc Cone

Others: David P. Littell, Commissioner
Andrew Fisk, Director, Bureau of Land and Water Quality
Cindy Bertocci, BEP Executive Analyst
Peggy Bensinger, Assistant Attorney General
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 3:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Andy Fisk, Director for the Bureau of Land and Water Quality, stated that Commissioner Littell would arrive at approximately 11:00a.m. to provide his briefing to the Board. Commissioner Littell reported the following:

Earth Day Auction: Commissioner Littell noted that the annual earth day auction will be held Friday, May 16th at Maple Hill Farm. The event raises money to pay for scholarships for Maine children to attend the Conservation School (currently known as the University of Maine 4-H Camp and Learning Center) at Bryant Pond and support maintenance and improvements to the Department's certified wildlife garden located behind the Ray Building.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS:

Ms. Bertocci explained that she is awaiting confirmation from the facilities on the May 28th and 29th site visits to the Stetson Ridge and Mars Hill wind power projects. A detailed travel itinerary may be provided to Board members next week

The site visit to the Lockwood Hydro facility is confirmed for June 5th and we anticipate departing from Augusta following our lunch break.

Board member Elizabeth Ehrenfeld asked about the schedule for a HoltraChem hearing.

Ms. Bertocci explained that she understands that replies to the petition submitted by the electronics industry which would impact the State's electronic waste law are due to the U.S. Dept. of Transportation in June, and staff resources from the DEP and the Attorney General's Office were diverted to address this time sensitive issue. It is unknown when the rescheduling of an evidentiary hearing on the HoltraChem matter will resume.

Additionally, Board Chair, Ernest Hilton, remarked on the status of the Quoddy Bay and Downeast LNG projects; highlighting that the projects were unlikely to be on the Board's summer schedule.

Ms. Bertocci confirmed that the Quoddy Bay application remains on hold with the DEP pending receipt of follow-up information concerning pipeline routes and Quoddy's need to identify both a source of fuel and fuel BTU grade which may impact project design. The Quoddy Bay application is also on hold with FERC pending submittal of additional application information.

Assistant Attorney General Peggy Bensinger noted that Downest LNG has not filed an application with the DEP and that FERC continues to process Downeast's application. Additionally, representatives for the Calais LNG project recently briefed various state agencies on their proposal – no applications have been filed.

- D. BOARD CALENDAR:** Reviewed
- E. DEPARTMENTAL ORDERS:** Reviewed
- F. EXECUTIVE SESSION:** None

II CONSENT AGENDA ITEMS

1. Minutes: April 3, 2008 (approval)

Board voted (4-0-3-3) on a motion to approve consent agenda item number 1 as amended correcting minor typographical errors.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Ernest Hilton, and Sue Lessard voted to support the motion. Board members P. Andrews Nixon, Matt Scott and Lissa Widoff recused. Board member Richard Gould, Don Guimond and Nancy Ziegler were absent.

Board voted (7-0-0-3) on a motion to approve consent agenda item 2 as presented:

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott and Lissa Widoff voted to support the motion. Board members Richard Gould, Don Guimond and Nancy Ziegler were absent.

2. COLBY & GALE, INC. and DAY BLOCK TRUST c/o RALPH H. DOERING, JR., TRUSTEE, Damariscotta - Administrative Consent Agreement (BRWM)

III. Regular Agenda

1. CHAPTER 150 CONTROL OF EMISSIONS FROM OUTDOOR WOOD BOILERS (Final Adoption)

Staff: Ron Severance, Bureau of Air Quality

The Board voted (3-1-3-3) on a motion to adopt Chapter 150, Control of Emissions of Outdoor Wood Boilers which establishes sale, installation and setback requirements for outdoor wood boiler units. This rule is major substantive and the Legislature amended the rule to: (1) clarify the sell through provision, (2) establish set back requirements for public areas (e.g. schools) to be consistent with those for residential locations, and (3) modify the specific setback requirements to provide a choice between measuring setback from either the nearest property line or the nearest dwelling that is not on the same property as the boiler. The Board voted pursuant to 38 M.R.S.A. Section 341–D(1-B), Section 585-A and Section 610-B.

Board members Elizabeth Ehrenfeld, Ernest Hilton, and Susan Lessard voted to support the motion. Board member M. Wing Goodale opposed. Board members P. Andrews Nixon, Matt Scott and Lissa Widoff recused. Board member Richard Gould, Don Guimond and Nancy Ziegler were absent.

Staff Informational brief:

In addition to the modifications to Chapter 150, the Resolve directed the Department and the Board to amend Chapter 150 to include standards for pellet fuel burning units. Additionally, the Legislature directed the Department to report back to them by January 1, 2009 on unit compliance issues, unintended consequences of the rule, and recommendations for improvement of the rule.

Lastly, a separate bill (LD 2263) provides the commissioner with emergency authority to shut-down a problem outdoor wood boiler. In the event that a unit is shut down, the owner would have appeal rights before the Board. The bill also provides for the establishment of a fund (Outdoor Wood Boiler Fund) to support a buy-back program. Enforcement penalties may be directed to the fund through a Supplemental Environmental Project.

Rulemaking on both matters is anticipated later this year.

2. RICHARD CAYER – Madawaska - L-023564-2B-A-N – Appeal of the Natural Resources Protection Act, denial of application to construct a private boat ramp
Staff: Robin Clukey, Bureau of Land and Water Quality

Chairman Ernest Hilton granted the request made by Mr. Cayer to allow the even numbered pages from Attachment B (Minutes of the Madawaska Planning Board Meeting May 21, 2002) of his application into the record. (note: no objection was offered by the other parties.)

The Board voted (7-0-0-3) on a motion to deny the appeal submitted by Richard Cayer regarding the Commissioner's denial of a Natural Resources Protection Act permit (L-023564-2B-A-N) for construction of a boat ramp on Long Lake in Madawaska finding that the proposed project would have an unreasonable cumulative impact on wetlands and water quality and that use of the existing Department of Conservation public boat ramp at St. Agatha represents a practicable alternative. The Board voted pursuant to 38 M.R.S.A. Sections 344, 341-D(4) and 06-096 CMR Chapter 2.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Ernest Hilton, Susan Lessard, P. Andrews Nixon, Matt Scott, and Lissa Widoff voted to support the motion. Board member Richard Gould, Don Guimond and Nancy Ziegler were absent.

The Board voted (7-0-0-3) on a motion to direct Department staff to revise the draft proposed Board order to include language that reflects the Board's additional findings that: (1) lake bottom disturbance from boat launching activities would have a cumulative adverse impact on water quality, (2) the application contained inconsistencies associated with the design of the project indicating that slopes would be significantly steeper than stated which would result in increased runoff and nonpoint source pollution to the resource, and (3) the applicant did not meet his burden of proof to demonstrate that water quality standards would be met,

INFORMATIONAL SESSION

- LD 1952 "An Act to Streamline the Administration of Significant Vernal Pool Habitat Protection" --- Staff: Jeff Madore

The informational session was postponed to a future regular meeting.

BOARD RECONVENED AT 1:30 TO CONDUCT A PUBLIC HEARING IN THE MATTER OF:

- CHAPTER 115 MAJOR AND MINOR SOURCE AIR EMISSION LICENSE REGULATIONS / AMENDMENTS
- CHAPTER 149 GENERAL PERMIT REGULATION FOR NON-METALLIC MINERAL PROCESSING PLANTS / NEW

Next Regular Meeting –Thursday, June 5, 2008 – Holiday Inn / Ground Round